

Congress of the United States

Washington, DC 20515

June 19, 2003

The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th Street & Constitution Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

Thank you for forwarding us material on your new guidelines concerning racial profiling. While we welcome the administration's commitment to ending racial profiling through the promulgation of federal guidelines, we continue to be perplexed by your failure to consult with Congress on this major policy initiative. In February 2001, you wrote a letter inviting Congress to join the Department in a consultative process to end racial profiling by introducing legislation that would ban the practice. However, following your initial overtures, we have had only two staff-level meetings on this issue and no contact from the Department since May 2002, despite numerous requests for continued consultation. Though the goal of the new policy guidelines is laudable, we are surprised that you would continue the practice of unilateral revision of DOJ procedures without consultation with Congress.

As to the guidelines themselves, we were pleased to see the Department largely embrace the ban on racial profiling defined in our legislation, the End Racial Profiling Act. The guidelines, however, fail to provide a comprehensive, nationwide ban and solution to the problem. First, there is considerable ambiguity in the guidelines on the use of race/ethnicity in the national security context. While we agree that there is no more important role for government than protecting the security of the American people, safety need not come at the sacrifice of civil liberties. It is insufficient to say that constitutional guidelines will circumscribe the use of race/ethnicity in the national security context, while creating a broad exception that allows even non-law enforcement airport screeners to use race or ethnicity as a factor for increased suspicion where there is "no expectation that the information [of a threat] be specific to a particular locale or even to a particular identified scheme." That exception could simply swallow the whole anti-profiling rule and allow members of the Arab and Muslim communities to continue to be targeted for increased scrutiny.

While these guidelines send a signal of federal concern, they are not a replacement for the enactment of comprehensive federal anti-profiling legislation. We again urge you to join us in the consultative process to pass the End Racial Profiling Act. This legislation would ban racial profiling by federal, state, and local law enforcement, provide a mechanism for enforcement of this ban, mandate data collection by state and local law enforcement agencies that receive federal

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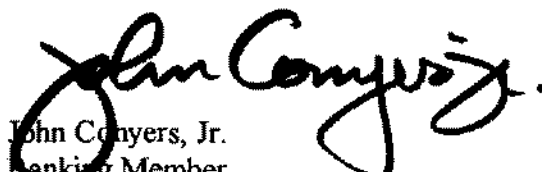
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funds, and provide financial and technical support from the Department to ensure that the best practices are deployed to fight racial profiling.

Mr. Attorney General, we appreciate your concern about this issue. As Congress carries out its responsibility to enact strong anti-profiling legislation, we urge you to participate fully in the process to ensure that the initiatives you have taken within the Justice Department can be carried out across the nation. As a result, we again renew our call to meet with you and your staff at your earliest convenience so that we may discuss this matter in greater depth.

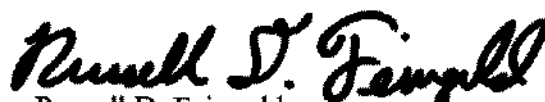
Sincerely,



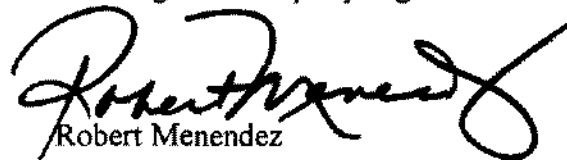
John Conyers, Jr.
Ranking Member
House Judiciary Committee



Jon S. Corzine
U.S. Senator



Russell D. Feingold
Ranking Member
Senate Judiciary Committee
Subcommittee on the Constitution,
Civil Rights & Property Rights



Robert Menendez
Chairman, Democratic Caucus

cc: Hon F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee

Hon. Orrin G. Hatch, Chairman
Senate Judiciary Committee

Hon Patrick J. Leahy, Ranking Member
Senate Judiciary Committee